



October 12, 1999

Mr. William L. Rentfro  
Rentfro, Raulk & Blakemore, L.L.P.  
185 Ruben M. Torres, Sr. Boulevard  
Brownsville, Texas 78520-9136

OR99-2918

Dear Mr. Rentfro:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. We assigned your request ID# 128070.

The Brownsville Independent School District (the "district"), which you represent, received a request for any letters of reprimand or warnings to two teachers. You state that no documents exist for one of the teachers. As for the other teacher, you contend that the requested information is excepted from disclosure pursuant to section 552.102 of the Government Code. We have considered your arguments and reviewed the submitted information.

Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure under the common-law right of privacy, the information must meet the

criteria set out in *Industrial Found. v. Texas Industrial Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 at 4 (1976) (construing statutory predecessor to Gov't Code § 552.101). We conclude that the submitted information does not contain highly intimate or embarrassing facts. *See* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for public employee's demotion, dismissal, or resignation). Therefore, the submitted information is not excepted by common-law privacy under section 552.101 or section 552.102. Except for the social security number discussed below, you must release the submitted information.

We note that the submitted information contains a social security number that may be excepted from public disclosure by section 552.117 of the Government Code. Section 552.117 excepts a public employee's social security number when the public employee requests that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold this information of a current or former employee or official who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). Therefore, if the teacher has elected to not allow public access to his social security number in accordance with the procedures of section 552.024 of the Government Code, we believe that the district must withhold this information from required public disclosure pursuant to section 552.117.

Additionally, a social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.353 of the

Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the district pursuant to any provision of law, enacted on or after October 1, 1990.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/nc

Ref.: ID# 128070

Encl.: Submitted document

cc: Mr. Alan L. Neeley  
5 Varadero  
Brownsville, Texas 78526  
(w/o enclosures)